IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

Crl.MC.No. 3186 of 2005()

AGAINST THE ORDER DATED / / IN MP 8602/05 IN
CC.1259/2001 of JUDL. MAGISTRATE OF FIRST CLASS COURT-II, THRISSUR

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PETITIONER:

T.P. VISWANATHAN, MANAGING DIRECTOR
M/S. SREE POORNA ROLLER & FLOUR MILLS PVT.LTD.,
THRISSUR.

BY ADV. SRI.V.V.ASOKAN
SMT.S.AMINA

RESPONDENTS: COMPLAINANT:

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1. M/S. PHARMA KURIES PVT.LTD.,
PUTHOOR BUILDING, BROTHERS LANE,
THRISSUR.

2. STATE OF KERALA, REPRESENTED
BY PUBLIC PROSECUTOR, HIGH COURT
OF KERALA.

BY ADV. SRI.DILIP J. AKKARA
BY P.P. SRI. GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ALONG WITH CRMC NOS.3188 AND 3189/05 ON 25/05/2007, THE COURT
ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NOs.3186, 3188 & 3189 OF 2005

Dated this the 25th day of May, 2007

ORDER

The common petitioner is the accused in three different prosecutions, all under Sec.138 of the Negotiable Instruments Act and all initiated by the respondent/complainant herein. The matter has reached the stage of defence evidence. At that stage, the accused filed an application to get the cheque examined by a handwriting expert. The signature in the cheque is not disputed. A contention is raised that the cheque was not issued for the due discharge of any legally enforceable debt/liability; but was issued as a blank signed cheque for security. It is further alleged that the complainant had filled up the entires in the cheque unauthorisedly and is making use of the cheques to stake untenable claims.

2. The application to forward the cheque to the expert was opposed. The learned Magistrate considered the contention and by identical orders which are impugned in

these Crl.M.Cs. came to the conclusion that it is not necessary to send the cheques to the expert.

3. It is by now trite that the discretion under Sec.254(2) of the Cr.P.C. is to be exercised alertly conscious of all the circumstances and not in any mechanical or rigid manner. No court can afford to ignore the fact that the mindless acceptance of the request to send the cheque to the expert would inevitably and unreasonably retard the progress of the prosecution under Sec.138 of the N.I. Act. The discretion under Sec.254(2) of the Cr.P.C. has to be exercised alertly by the trial court.

4. The learned Magistrate took note of the fact that there is no case at all for the complainant that the accused had made the entries in the cheque in the presence of the complainant. That being so, the learned Magistrate found no reason to justify the insistence on forwarding the cheque to the expert. I find the said reasoning of the learned Magistrate to be reasonable and cogent.

5. At any rate, I do not intend to finally conclude the question. Challenge of interlocutory orders is not encouraged by law. Sec.397(2) of the Cr.P.C. reflects this policy of the law. However, if failure of justice takes place, this Court

undisputedly has power under Sec.482 of the Cr.P.C. and Art.226/227 of the Constitution to intervene and entertain the challenge against interlocutory orders also. But I am satisfied on a total consideration of all the relevant circumstances that these are cases where the interlocutory orders sought to be challenged must wait for the challenge if necessary along with the final orders to be passed in the proceedings. These, I am satisfied, are not fit cases where the extraordinary inherent jurisdiction ought to be or deserves to be invoked.

6. In the result, these Crl.M.Cs. are dismissed with the above observations.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge